TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~418.~~ 183

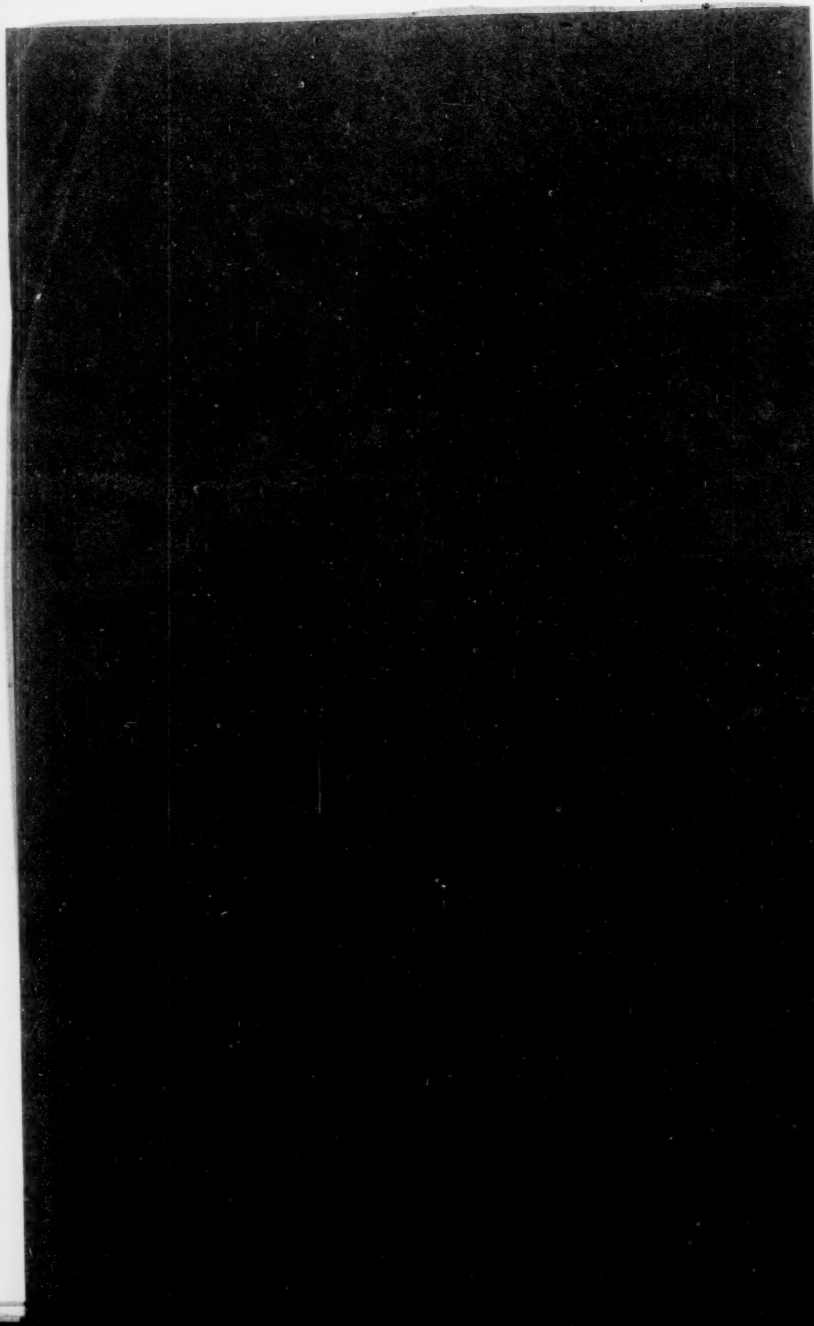
EDWARD RYAN, PLAINTIFF IN ERROR,

vs.

CAUFFMAN KOCH, ADOLPH MAYER, AND JACOB GOLDSMITH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MICHIGAN.

FILED NOVEMBER 27, 1871.



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INDEX.

	Original.	Print.
Writ of error	1	1
Citation	4	1
Declaration	6	2
Plea	11	4
Verdict	14	5
Judgment	15	6
Bill of exceptions	16	6
Assignment of errors	24	8
Certificate of clerk of circuit court	29	10

1 UNITED STATES OF AMERICA:

[SEAL.] The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Michigan, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, between Cauffman Koch, Adolph Mayer, and Jacob Goldsmith, plaintiffs and Edward Ryan, defendant, a manifest error hath happened to the great damage of the said Edward Ryan, as by his complaint appears

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same

2 at Washington on the first Monday of December, A. D. 1871, in the said Supreme *Supreme* Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, this thirtieth day of September, A. D. 1871.

ADDISON MANDELL,
Clerk of U. S. Circuit Court for Eastern District of Michigan.

Allowed by—

JNO. W. LONGYEAR,
District Judge.

3 (Indorsed:) No. 4863. Supreme Court of the United States. Edward Ryan, pl'ff in error, vs. Cauffman Koch et al., def'ts in error. Writ of error. Filed in clerk's office Sept. 30, 1871. A. Mandell, clerk. Meddaugh & Driggs, att'ys for pl'ff.

The execution of the within writ appears in the schedule hereto annexed.

A. MANDELL, *Clerk.*

4 The United States of America to Cauffman Koch, Adolph Mayer, and Jacob Goldsmith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December, A. D. 1871, pursuant to a writ of error filed in the clerk's office of the United States for the eastern district of Michigan, wherein Edward Ryan is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Longyear, judge of the district court of the United States for the eastern district of Michigan, this 30th day of September, A. D. 1871.

JNO. W. LONGYEAR,
District Judge.

5 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this 30th day of September, A. D. 1871, personally appeared before me Herbert Bowen, and makes oath that on the 30th day of September, 1871, he served the within citation on A. B. Maynard, esq., attorney for defendants in error, by leaving a true copy thereof in his office with H. H. Swan, the person in charge thereof.

HERBERT BOWEN.

Subscribed and sworn to before me this 30th day of September, 1871.

D. I. DAVISON,
U. S. Comm'r East. Dist. Mich.

(Indorsed:) No. 4843. Supreme Court of the United States. Edward Ryan, pl'ff in error, vs. Cauffman Koch et al., def'ts in error. Citation. Filed in clerk's office Sept. 30, 1871. A. Mandell, clerk. Meddaugh & Driggs, att'ys for pl'ff.

6 Pleas before the judges of the circuit court of the United States for the sixth circuit and eastern district of Michigan, at the district court-room in the city of Detroit, of the term of June, in the year of our Lord one thousand eight hundred and seventy-one, in the case wherein Cauffman Koch, Adolph Mayer, & Jacob Goldsmith are plaintiffs, and Edward Ryan is defendant.

Be it remembered that on the twenty-second day of September, in the year of our Lord one thousand eight hundred and seventy, the said plaintiffs, by A. B. Maynard, their attorney, came into the court aforesaid before the judges thereof, and filed their declaration against the said defendant; which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA:

Circuit court of the United States for the eastern district of Michigan. Of the June term, A. D. 1870, to wit, of the 22d day of September of said year.

CAUFFMAN KOCH, ADOLPH MAYER, AND JACOB Goldsmith, pl'ffs,
vs.
EDWARD RYAN.

7 EASTERN DISTRICT OF MICHIGAN, *ss:*

Cauffman Koch, Adolph Mayer, and Jacob Goldsmith, who are each citizens of the State of Ohio, by A. B. Maynard, their attorney, filing this their declaration as commencement of suit, complain of Edward Ryan, who is a citizen of the State of Michigan, and a resident of said eastern district of Michigan, of a plea of trespass on the case upon promises.

For that whereas the said defendant heretofore, to wit, on the seventh day of May, A. D. 1870, at, to wit, Hancock, in said eastern district of Michigan, made a certain bill of exchange, in writing, bearing date the day and year aforesaid, and then and there directed the said bill of ex-

change to the South Pewabic Copper Company, a corporation organized and doing business under the laws of the State of Michigan, by which said bill of exchange, he, the said defendant, then and there requested the said South Pewabic Copper Company to pay to said plaintiffs or order, the sum of two thousand and seven hundred dollars for value received, and then and there delivered the said bill of exchange to the said plaintiffs, which said bill of exchange the said South Pewabic Copper Company afterwards, to wit, on the ninth day of May, A. D.
1870, at, to wit, Houghton, in said eastern district of Michigan,
8 upon sight thereof accepted. And the said plaintiffs aver that afterwards when the said bill of exchange became due and payable according to the tenor and effect thereof, to wit, on said twelfth day of May, A. D. 1870, to wit, at Houghton aforesaid, the said bill of exchange was presented and shown to the said South Pewabic Copper Company for payment thereof, according to the usage and custom of merchants, and the said South Pewabic Copper Company was then and there requested to pay the said sum of money therein specified, according to the tenor and effect of the said bill of exchange; but that the said South Pewabic Copper Company did not, nor would at the said time when the said bill of exchange was so presented and shown to it for the payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do, of all of which said several premises the said defendant afterwards, to wit, on the twelfth day of May, A. D. 1870, last aforesaid, at, to wit, Hancock aforesaid, had notice, by means whereof and according to the said usage and custom of merchants, the said defendant then and there became liable
to pay to the said plaintiffs the said sum of money in the said
9 bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested, and being so liable he, the said defendant, in consideration thereof, afterwards, to wit, on the said twelfth day of May, A. D. 1870, last aforesaid, to wit, at Hancock aforesaid, undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested.

And, also, for that the defendant, on the first day of June, A. D. 1870, was indebted to the plaintiffs in ten thousand dollars for the price and value of goods then sold and delivered by the plaintiffs to the defendant at his request.

And in a like sum for the price and value of work then done and materials for the same provided by the plaintiffs for the defendant at his request.

And in a like sum for money then lent by the plaintiffs to the defendant at his request.

And in a like sum for money then paid by the plaintiffs for the defendant at his request.

And in a like sum for money then received by the defendant for the use of the plaintiffs.

And in a like sum for money then found to be due from the defendant to the plaintiffs, on an account stated between them.

10 And thereupon the defendant afterwards, and on the day and year aforesaid, in consideration of the premises respectively, then promised the plaintiff to pay them the said several last-mentioned moneys, respectively, on request; yet he has disregarded his promises, and has not paid any of the said moneys or any part thereof, to the

5 UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

On this 30th day of September, A. D. 1871, personally appeared before me Herbert Bowen, and makes oath that on the 30th day of September, 1871, he served the within citation on A. B. Maynard, esq., attorney for defendants in error, by leaving a true copy thereof in his office with H. H. Swan, the person in charge thereof.

HERBERT BOWEN.

Subscribed and sworn to before me this 30th day of September, 1871.

D. I. DAVISON,
U. S. Comm'r East. Dist. Mich.

(Indorsed:) No. 4843. Supreme Court of the United States. Edward Ryan, pl'ff in error, vs. Cauffman Koch et al., def'ts in error. Citation. Filed in clerk's office Sept. 30, 1871. A. Mandell, clerk. Meddaugh & Driggs, att'ys for pl'ff.

6 Pleas before the judges of the circuit court of the United States for the sixth circuit and eastern district of Michigan, at the district court-room in the city of Detroit, of the term of June, in the year of our Lord one thousand eight hundred and seventy-one, in the case wherein Cauffman Koch, Adolph Mayer, & Jacob Goldsmith are plaintiffs, and Edward Ryan is defendant.

Be it remembered that on the twenty-second day of September, in the year of our Lord one thousand eight hundred and seventy, the said plaintiffs, by A. B. Maynard, their attorney, came into the court aforesaid before the judges thereof, and filed their declaration against the said defendant; which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA:

Circuit court of the United States for the eastern district of Michigan. Of the June term, A. D. 1870, to wit, of the 22d day of September of said year.

CAUFFMAN KOCH, ADOLPH MAYER, AND JACOB Goldsmith, pl'ffs,
vs.
EDWARD RYAN.

7 EASTERN DISTRICT OF MICHIGAN, *ss:*

Cauffman Koch, Adolph Mayer, and Jacob Goldsmith, who are each citizens of the State of Ohio, by A. B. Maynard, their attorney, filing this their declaration as commencement of suit, complain of Edward Ryan, who is a citizen of the State of Michigan, and a resident of said eastern district of Michigan, of a plea of trespass on the case upon promises.

For that whereas the said defendant heretofore, to wit, on the seventh day of May, A. D. 1870, at, to wit, Hancock, in said eastern district of Michigan, made a certain bill of exchange, in writing, bearing date the day and year aforesaid, and then and there directed the said bill of ex-

change to the South Pewabic Copper Company, a corporation organized and doing business under the laws of the State of Michigan, by which said bill of exchange, he, the said defendant, then and there requested the said South Pewabic Copper Company to pay to said plaintiffs or order, the sum of two thousand and seven hundred dollars for value received, and then and there delivered the said bill of exchange to the said plaintiffs, which said bill of exchange the said South Pewabic Copper Company afterwards, to wit, on the ninth day of May, A. D. 1870, at, to wit, Houghton, in said eastern district of Michigan,
8 upon sight thereof accepted. And the said plaintiffs aver that afterwards when the said bill of exchange became due and payable according to the tenor and effect thereof, to wit, on said twelfth day of May, A. D. 1870, to wit, at Houghton aforesaid, the said bill of exchange was presented and shown to the said South Pewabic Copper Company for payment thereof, according to the usage and custom of merchants, and the said South Pewabic Copper Company was then and there requested to pay the said sum of money therein specified, according to the tenor and effect of the said bill of exchange; but that the said South Pewabic Copper Company did not, nor would at the said time when the said bill of exchange was so presented and shown to it for the payment thereof as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but then and there wholly neglected and refused so to do, of all of which said several premises the said defendant afterwards, to wit, on the twelfth day of May, A. D. 1870, last aforesaid, at, to wit, Hancock aforesaid, had notice, by means whereof and according to the said usage and custom of merchants, the said defendant then and there became liable to pay to the said plaintiffs the said sum of money in the said
9 bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested, and being so liable he, the said defendant, in consideration thereof, afterwards, to wit, on the said twelfth day of May, A. D. 1870, last aforesaid, to wit, at Hancock aforesaid, undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said bill of exchange specified, when he, the said defendant, should be thereunto afterwards requested.

And, also, for that the defendant, on the first day of June, A. D. 1870, was indebted to the plaintiffs in ten thousand dollars for the price and value of goods then sold and delivered by the plaintiffs to the defendant at his request.

And in a like sum for the price and value of work then done and materials for the same provided by the plaintiffs for the defendant at his request.

And in a like sum for money then lent by the plaintiffs to the defendant at his request.

And in a like sum for money then paid by the plaintiffs for the defendant at his request.

And in a like sum for money then received by the defendant for the use of the plaintiffs.

And in a like sum for money then found to be due from the defendant to the plaintiffs, on an account stated between them.

10 And thereupon the defendant afterwards, and on the day and year aforesaid, in consideration of the premises respectively, then promised the plaintiff to pay them the said several last-mentioned moneys, respectively, on request; yet he has disregarded his promises, and has not paid any of the said moneys or any part thereof, to the

plaintiffs' damage of ten thousand dollars. And therefore they bring suit, &c.

(Sig'd) A. B. MAYNARD,
Plaintiffs' Attorney.

Upon the filing of which said declaration the following rule was entered:

Rule to plead.

SEPTEMBER 22D, 1870.

CAUFFMAN KOCH, ADOLPH MAYER, & JACOB Goldsmith
vs.
EDWARD RYAN.

On filing a declaration in this cause as commencement of suit, and on motion of A. B. Maynard, attorney for plaintiff, it is ordered that the defendant appear and plead to said declaration within thirty days after service on him of a copy thereof and notice of this rule; or judgment, &c.

(Sig'd) A. B. MAYNARD,
Attorney for Plaintiffs.

11 *Marshal's return of service, &c.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that, upon the 14th day of October, A. D. 1870, I served the within declaration upon Edward Ryan, defendant within named, by delivering to him, personally, at Hancock in said district, a true copy thereof with like notice thereon endorsed as is hereon endorsed.

(Sig'd) JOSEPH R. BENNET,
U. S. Marshal,
By HENRY H. ALVORD,
Dep. U. S. Marshal.

Fees, $49.30.

To which said declaration the said defendant, by Meddaugh & Driggs, his attorneys, on the 18th day of January, A. D. 1871, filed in said court, his plea and notice, in the words and figures following, to wit:

Plea and notice.

The circuit court of the United States for the eastern district of Michigan.

CAUFFMAN KOCH, ADOLPH MAYER, & JACOB Goldsmith
vs.
EDWARD RYAN.

EASTERN DISTRICT OF MICHIGAN, *ss:*

12 And now comes said defendant, by Meddaugh & Driggs, his attorneys, and defends the wrong and injury, when, etc., and says that he did not undertake or promise in manner or form as the

said plaintiffs hath above thereof complained against him. And of this he puts himself upon the country, etc.

(Sig'd) MEDDAUGH & DRIGGS,
Att'ys for Def't.

To the above-named plaintiffs, and to A. B. Maynard, their attorney:

Take notice that, on the trial of the above cause, and under said plea, the defendant will show in evidence that, at the time the draft or order described in the special counts in plaintiffs' declaration was given, and made by said defendant, he, said defendant, was indebted to said plaintiffs; that, in payment of said indebtedness, said defendant gave said order or draft, and paid said plaintiffs the balance in money; that said plaintiffs agreed then and there to receive said draft or order and money in payment of said indebtedness, and in full discharge of the liabilty of said defendant, and agreed to look exclusively for the payment of said draft or order to the drawees therein named; that before, so as aforesaid, accepting said draft or order, said plaintiffs went to the drawees
13 to learn from them when they would probably pay the same and how, and was told by them that they would pay a part of it during the month following its date; that thereupon said draft or order was drawn and delivered by said defendant to said plaintiffs, and by them accepted as aforesaid; that said plaintiffs then presented said draft or order to the drawees, and requested them to credit said plaintiffs with the same on their books of accounts which said drawees did, and also directed the drawees when and how to remit money to them in payment of said draft or order; that, at the time of making said draft or order, said drawees were indebted to said defendant in the amount thereof, the evidence of which said defendant held in the form of orders which said drawees had made in favor of their laborers; that on the day following the making of said draft or order, and after said plaintiffs had applied for and procured a credit of the same in their favor, as aforesaid, on the books of said drawees, said drawees applied to said defendants for and took up and cancelled said orders drawn by them, and held by said defendant as aforesaid, the same having been paid and satisfied by said drawees by accepting the draft or order drawn
14 on them by said defendant, and crediting the same to said plaintiffs as aforesaid.

(Sig'd) MEDDAUGH & DRIGGS,
Att'ys for Def't.

JAN. 18, 1871.

Award of venire.

Therefore, to try the issue above joined, let a jury come thereof, by whom, &c., who neither, &c., because, as well the said plaintiffs as the said defendant have put themselves on that jury.

Verdict.

And the jurors of that jury of whom mention is made, to wit, Israel J. Beniteau, George Baker, Andrew Ladue, Albert J. Baker, Samuel R. Kingsley, William A. Henry, George Holden, Maximilian Todt, John Brabb, Hugh Gray, junior, Ebenezer McMillan, and Samuel C. Harris, who were, on the twentieth day of September, A. D. eighteen hundred and seventy-one, elected, tried, and sworn to try the issue joined in this case,

and after hearing the arguments of counsel, and receiving the charge of the court, retired to their room to consult of their verdict, under the charge of Theodore W. Ray, the officer sworn to attend them; and after being a short time absent, return into court, and say they find that said
15 defendant did undertake and promise in manner and form as the said plaintiffs have in their declaration alleged against him, and they, the jury, assess the said plaintiffs' damages on occasion thereof at the sum of two thousand nine hundred and fifty-seven dollars and twenty-five cents ($2,957.25.)

Judgment.

It is therefore considered by the court now here that the said plaintiffs do recover of the said defendant, Edward Ryan, the sum of two thousand nine hundred and fifty-seven dollars and twenty-five cents ($2,957.25) damages assessed as aforesaid, together with the sum of one hundred and thirteen dollars and eighty cents for the costs and charges of the said plaintiffs by them about their suit in this behalf laid out and expended.

Judgment signed Sept. 21, 1871.

ADDISON MANDELL, *Clerk.*

16 The circuit court of the United States for the eastern district of Michigan.

CAUFFMAN KOCH, ADOLPH MAYER, AND Jacob Goldsmith
vs.
EDWARD RYAN.

At a session of said court held at the court-house in the city of Detroit on the twentieth day of September, A. D. 1871, before the Hon. orable John W. Longyear, one of the judges of said court, the issue joined between the parties in this cause came on to be tried by a jury duly empanneled and sworn for that purpose.

Thereupon the said plaintiffs to prove said issue on their part introduced evidence tending to show the following facts:

That on or about the 7th day of May, 1870, the defendant was indebted to the plaintiffs in the sum of three thousand twenty-six and $\frac{51}{100}$ dollars for goods theretofore sold and delivered by them to him; that on said
17 7th day of May, 1870, said plaintiffs, through their agent, one Wilms, came to a settlement with the defendant at the town of Hancock, in the Upper Peninsula of the State of Michigan, by which defendant gave to their said agent a draft, dated May 7th, 1870, and payable at sight, drawn by himself upon the South Pewabic Copper Company in favor of said plaintiffs, for the sum of twenty-seven hundred dollars, and at the same time gave to said agent a check on the bank for the sum of three hundred and twenty-six and $\frac{51}{100}$ dollars; that said defendant, at the time it was agreed that said draft should be taken, stated to said agent that said company was not in the habit of paying promptly, and usually paid as they received returns from their copper sold, which was monthly; that as such returns from copper were received said company generally paid the proceeds to their creditors pro rata, and that the draft would probably be paid in thirty or sixty days; that said defendant promised said agent that he would pay said draft if said company did not, and that said draft was

18 accepted by said agent on the express understanding that it was to be, not in payment of the account of said plaintiffs against said defendant, but only as collateral thereto; that on the 9th day of May, 1870, said agent took said draft to one Lewis, informing said Lewis that he, Lewis, was recommended to him by Mr. Noble and told said Lewis he wished to leave the draft with him, and to have him send the avails when collected to the plaintiffs. Lewis said it would be paid probably within sixty days. And it further appears by the indorsement of said draft and by the evidence that the same was then and there accepted by said Lewis, as clerk, on behalf of said South Pewabic Company; that said check was paid, but that said draft was not paid by said company, and that on the 2d day of July, 1870, said plaintiffs deposited in the post-office at Cleveland, Ohio, a letter addressed to said defendant, a copy of which is hereto attached, marked "Exhibit A," to which they received a reply from said defendant,
19 (the letter,) a copy of which is hereto attached, marked "Exhibit B;" a copy of said draft is hereto annexed marked "Exhibit C."

Said defendant to maintain said issue on his part introduced evidence tending to show:

That said settlement was had and said draft was given on the 7th day of May, 1870; that said defendant did not promise to pay said draft if said South Pewabic Company, the drawee, did not do so; that said draft was not given by said defendant or received by the agent of said plaintiffs as collateral to said indebtedness of said defendant to said plaintiffs on account, but was given and received upon the agreement that it was in full payment of said account.

Thereupon, without any further or other evidence on the part of either of said parties, after the argument of counsel the said circuit judge instructed the jury, among other things, as follows:

20 That if the jury should find from the evidence that the draft or order of the defendant on the South Pewabic Copper Company was given and received with the understanding that it would not be paid immediately, but along from time to time, within thirty or sixty days, as the company should receive returns from its products, then the necessity of presentation and notice of non-payment on the third day after acceptance by the company may be considered as waived, and the notice of non-payment by the letter from plaintiffs to defendant, of July 2d, 1870, was a sufficient notice to fix the liability of the defendant as drawer.

To which said charge of said circuit judge counsel for the defendant did then and there except. And thereupon the jury gave their verdict for the plaintiffs and assessed their damages at the sum of twenty-nine hundred fifty-seven & $\frac{25}{100}$ dollars.

And inasmuch as the said several matters do not appear of record in this case this bill of exceptions is settled this 11th day of October, 1871, at the prayer of said defendant.

JNO. W. LONGYEAR,
Judge of the District Court of the United States
for the Eastern District of Michigan.

21 "EXHIBIT A."

CLEVELAND, O., *July* 2, '70.

E. RYAN, Esq., *Hancock, Mich.*

DEAR SIR: Your order on the "South Pewabic" is not yet paid. We expected the amount, as agreed upon, within 30—60 days. As we are

in a great need of funds, you will oblige us by remitting the amount at an early day.

Respectfully, yours,

KOCH, MAYER & GOLDSMITH.
LOUIS THO'S WILMS.

"EXHIBIT B."

HANCOCK, *July* 8, 1870.

Messrs. KOCH, MAYER & GOLDSMITH,
Cleveland, Ohio.

GENTLEMEN: Your letter of July 2nd is before me. I am quite astonished at your asking a remittance of me. I consider my indebtedness to you entirely settled, excepting for bill of goods which I purchased of you since our settlement. If the South Pewabic Copper
22 Co. have not paid you, I cannot help it, as the amount was charged to my ac. in Sou. Pew. office immediately after you presented your order there. You will have to look to the mine for your pay and not to me, as I do not consider I have anything to do with it.

Yours, truly,

EDWARD RYAN.

"EXHIBIT C."

$2,700.] HANCOCK, *May*, 7, 1870.

To SOUTH PEWABIC COPPER CO.:

Pay to Koch, Mayer & Goldsmith, or order, the sum of twenty-seven hundred dollars, for value received, and charge to my account.

EDWARD RYAN.

[E. R. May 7, '70.]

(Endorsed:)

T. SUMNER LEWIS,
Clerk So. Pew. Cop. Co.

HOUGHTON, *May* 9, '70.

23 (Indorsed:) No. 4843. U. S. circuit court. Cauffman Koch et al., vs. Edward Ryan. Bill of exceptions. Filed in clerk's office Oct. 16, 1871. A. Mandell, clerk. X'd. Theodore Romyn, att'y for def't.

24 Supreme Court of the United States.

EDWARD RYAN, PLAINTIFF IN ERROR,
vs.
CAUFFMAN KOCH, ADOLPH MAYER, AND Jacob Goldsmith, defendants in error.

And now comes said plaintiff in error, and, for assignment of errors, says:

1st. That said judge erred in instructing the jury that if they should find, from the evidence, that the draft or order of the defendant on the South Pewabic Copper Company was given and received with the understanding that it would not be paid immediately, but along, from time

to time, within thirty or sixty days, as the Copper Company should receive returns from its products, then the necessity of presentation and notice of non-payment, on the third day after its acceptance by the company, may be considered as waived, and the notice of non-payment by the letter of plaintiffs to defendant, of July 2d, 1870, was a
25 sufficient notice to fix the liability of defendant as drawer.

2d. That said judge erred in said instruction to the jury, in assuming that there was evidence before the jury from which they could find that, at the time the draft was given and received, it was the understanding between the plaintiff in error and the defendants in error that it would not be paid according to its terms.

3d. That said judge erred in said instruction to the jury in assuming that an understanding between the parties before said draft was made and received, respecting the time when the drawee would probably pay it, could control and qualify the terms of the draft as it was finally made.

THEODORE ROMYN,
Att'y for Pl'tiff in Error.

26 (Indorsed:) Supreme Court of the United States. Edward Ryan, pl'ff in error, vs Cauffman Koch et al., def'ts in error. Assignments of errors. X'd. Filed in clerk's office Oct. 16, 1871. A. Mandell, clerk. Theodore Romyn, att'y for pl't'ff in error.

27 *Bond.*

Know all men by these presents that we, George F. Bagley and George Foote, of the city of Detroit, Michigan, are held and firmly bound unto Cauffman Koch, Adolph Mayer, and Jacob Goldsmith in the sum of six thousand dollars, ($6,000,) lawful money of the United States of America, to be paid to the said Koch, Mayer, and Goldsmith, or to their certain attorney, heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals dated the twenty-ninth day of September, one thousand eight hundred and seventy-one.

Whereas lately, at a session of the circuit court of the United States for the eastern district of Michigan, in a case depending in said court between Cauffman Koch, Adolph Mayer, and Jacob Goldsmith, plaintiffs, and Edward Ryan, defendant, judgment was rendered against the said Edward Ryan, and the said Edward Ryan having obtained a writ of error from the Supreme Court of the United States and filed a copy thereof in the clerk's office of said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Koch, Mayer, and Goldsmith, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden, at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said Edward Ryan shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void and of no effect; otherwise to remain in full
28 force and virtue.

GEO. F. BAGLEY. [L. S.]
GEORGE FOOTE. [L. S.]

Sealed and delivered in presence of—
HERBERT BOWEN.

Approved by—

JNO. W. LONGYEAR,
District Judge.

(Indorsed:) No. 4843. Supreme Court of the United Staties. Edward Ryan, pl'ff in error, vs. Cauffman Koch et al., def'ts in error. Bond on appeal. Filed in clerk's office Sept 30, 1871. A. Mandell, clerk.

29 Circuit court of the United States for the eastern district of Michigan.

CAUFFMAN KOCH, ADOLPH MAYER, JACOB Goldsmith,
vs.
EDWARD RYAN.

I, Addison Mandell, clerk of said court, do hereby certify the above and foregoing to be a true copy of the original record of judgment in the above-entitled cause, the same having been carefully compared by me with such original, and is a correct transcript therefrom and of the whole of such original record; and also the original bill of exceptions and assignment of errors filed in said cause and the bond to said plaintiff.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Detroit, this thirty-first day of October, in the year of our Lord one thousand eight hundred and seventy-one, and of our independence the ninety-sixth.

[SEAL.] ADDISON MANDELL, *Clerk.*

(Indorsed:) Edward Ryan, pl'ff in error, vs. Cauffman Koch, Adolph Mayer, & Jacob Goldsmith, def'ts in error. Writ of error & return thereto. Meddaugh & Driggs, & Theodore Romyn, att'ys for pl'ff in error. A. B. Maynard, att'y for def't in error.

(Indorsement on cover:) No. 418. Edward Ryan, plaintiff in error, vs Cauffman Koch, Adolph Mayer, and Jacob Goldsmith. Michigan C. C. U. S. Filed 27 November, 1871.